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GOVERNOR



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Environmental Cleanup Office

July 6, 2000

Ms. Carol Browner
EPA Administrator
Ariel Rios Bldg
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Browner:

In an April 4, 2000 letter, EPA Region X Administrator Chuck Clarke requested my concurrence on the proposed listing of the Portland Harbor as a Superfund site. The health of the Willamette River and the Portland Harbor are important to all Oregonians. The Portland Harbor is in the center of Oregon's largest urban area, and is the most industrialized section of the river, supporting much of our economy. Just as important, the river provides habitat to many species of salmon and numerous species of wildlife. It also has a significant place in the history and traditions of the Tribes of the region.

As you know, Oregon worked hard to avoid a Superfund listing and to gain a deferral of the cleanup to the State. Unfortunately, this was not possible after the Potentially Responsible Parties and the trustees were not able to reach a tolling agreement. I had consistently maintained that it would be appropriate for EPA to list the Portland Harbor if natural resource and tribal trust concerns were not adequately addressed, and I concur with EPA's proposal to move forward with listing.

At the same time, I believe the cleanup of Portland Harbor will be more effective with a coordinated approach that utilizes the local knowledge and experience of Oregon and takes into account other important natural resource protection work that is already occurring under the Clean Water Act and the Oregon Plan for Salmon and Watersheds. The attached Portland Harbor Cleanup Statement of Principles (Principles) sets forth a framework for roles and responsibilities of EPA and the State in carrying out a complex environmental cleanup. Clearly, successful and effective cleanup will also require involvement by, and understanding of the needs and issues of, the Tribes, the local community, the business community and local governments. It is for this reason that the Principles are needed to establish a clear framework in which to involve and respond to the needs of these other interested parties.

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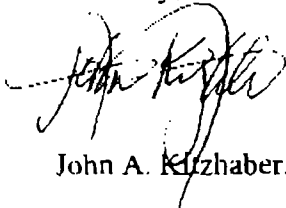
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It is extremely important to me and other Oregonians that the Harbor cleanup is integrated with the Oregon Plan and other projects underway that will restore the health of the river ecosystem, protect salmon and meet clean water and ESA goals. DEQ's role in the Portland Harbor Cleanup is important to ensure that these ongoing efforts are coordinated with the Superfund process and potential conflicts minimized wherever possible

It is my understanding from conversations with Chuck Clarke that the Environmental Protection Agency (EPA) will work jointly with the state on an expeditious cleanup and provide resources to assure our environmental goals for cleaning up the Harbor are met. I appreciate Chuck's efforts in this matter.

I know that we can all be proud of the work to date in Portland Harbor, and I look forward to both agencies working together to continue that progress. Please contact Langdon Marsh at (503) 229-5301 if there are questions concerning this letter or my concurrence to the listing of Portland Harbor on the NPL.

Sincerely,



John A. Kitzhaber, M.D.

cc: Chuck Clarke, Region X Administrator
Langdon Marsh, DEQ
Neil Mullane, DEQ

Attachment

Portland Harbor Cleanup Statement of General Principles

Purpose: Establish relationship framework between EPA and DEQ for implementation of the Portland Harbor Cleanup Program.

Background: EPA and DEQ have identified CERCLA National Priorities List-caliber contamination along the lower Willamette River in the Portland Harbor. Both EPA and DEQ have statutory responsibility and authority to cleanup the contamination. To meet our mutual goal of ensuring an environmental cleanup that is protective of public health and the environment, the agencies are determined to work together in an atmosphere of mutual respect for each agency's work and expertise.

The following statement of general principles identifies the general role each agency will have on this project. The specific roles and responsibilities for each agency will be set out in a Memorandum of Agreement that will also establish a decision framework process for areas in which EPA and DEQ have joint responsibility.

Portland Harbor Cleanup Approach

DEQ and EPA have identified eight general principles to guide the Portland Harbor Cleanup.

1. The Portland Harbor Cleanup will be directed by a joint EPA/DEQ Project Team (Team), which will work together to creatively solve problems and accomplish environmental goals.
2. The Portland Harbor Cleanup includes upland and in-water contamination. DEQ, using state cleanup authority, will have lead technical and legal responsibility for the upland contamination and for coordinating with EPA on upland contamination, which may impact in-water contamination. EPA, using federal Superfund authorities, will have lead technical and legal responsibility for in-water contamination. Under the auspices of EPA's lead on in-water contamination, DEQ will provide technical support, coordination of state critical initiatives, and assistance in implementing the public involvement program.
3. Each agency will appoint a management lead for the Team. The management lead will be responsible for managerial-level decisions on the Project and will provide the initial management level for resolution of technical team disagreements. The management lead for each agency will jointly develop a decision-making process that describes who will be responsible for dispute resolution up through and including the Director of DEQ and Regional Administrator of EPA.
4. Each agency will appoint a technical lead for the Team. The technical lead will be responsible for bringing their agency's technical expertise to the table to explore,

evaluate, select, and support the technical approaches of the Team. The technical lead will be responsible for coordination of the Team to reach agreement on issues and concerns or will move unresolved issues to the management lead for consideration and resolution.

5. Each agency will identify a lead legal representative who will work with the Team and the corresponding agency's legal representative to develop the legal strategy for the Project.
6. EPA, in order to better facilitate team building and coordination, will maintain a staff presence in Portland, including locating a lead Project Manager in Portland. The agencies will explore the possibility of co-locating team members in a joint office. The project team will hold routine meetings in Portland and the project will begin with a professionally facilitated team building effort.
7. The Team will develop a media communications plan for the purpose of providing a consistent and coordinated message. The plan will include but not be limited to describing: how the Team will interact with the media; who will represent the Team on various issues; and, how the technical and management team leads will be kept informed about media contacts.
8. The Team will develop a coordinated strategy for working with the PRPs.

Implementation of the roles and responsibilities outlined below are based on establishing the joint team approach described above.

State Critical Initiatives

Oregon has embarked on a number of natural resource initiatives, several in response to federal statutes. These initiatives are of critical importance and will be appropriately integrated into the Portland Harbor Cleanup. The initiatives include but are not limited to:

TMDLs: DEQ is developing and implementing total maximum daily loads (TMDLs) for water quality limited parameters in the lower Willamette River in response to Clean Water Act requirements. As work proceeds on harbor cleanup efforts, the Team will coordinate sediment cleanup standards with TMDL development. Once TMDLs are established for the Willamette River, the TMDLs will be among the requirements in-water remediation will have to meet.

CSOs: DEQ has required the development and implementation of a combined sewer overflow control program in response to Clean Water Act requirements for the City of Portland. The Team will assure that its activities in the Portland Harbor Cleanup meet, if not exceed, the requirements of the CSO program.

Oregon Plan: DEQ has developed and is implementing responsibilities under the Oregon Plan, the state's natural resource program for salmon and watershed protection. DEQ, in coordination with the federal natural resource agencies, will advise the Team as to whether Oregon Plan activities are being developed and/or implemented which may impact activities conducted by the Portland Harbor Cleanup.

DEQ will be responsible for alerting the Team of any conflicts it sees between team cleanup strategies and any state initiative.

The Team technical lead will be responsible for evaluating issues and concerns between state initiatives and cleanup efforts and resolving the concerns or moving disputed issues to the management lead and up through the management decision-making process.

Project Strategy

- The Team's initial work task will be to evaluate the work plan developed by the State during its deferral effort to ensure that all of the major elements of the State's work plan are incorporated into the Statement of Work, which will be attached to the proposed EPA sediment RI/FS Administrative Order on Consent to begin negotiations. The State's work plan in its entirety will be presented to the PRPs for their consideration with all sections previously commented on by trustees and tribes that participated in the work plan development specifically identified and those comments included. If the PRPs elect not to propose to utilize the state work plan approaches in their draft work plan, they will do so with an understanding that further consultation will be needed with the trustees and tribes. In any event, tribes that did not participate in work plan development must be consulted even where the PRPs may elect to utilize portions of the state's work plan.
- The technical lead will draft all decision documents in conjunction with the Team.
- The in-water technical lead will have the lead responsibility on ESA Section 7 consultations, and will coordinate closely with the Team on other ESA and natural resource issues related to the river.

Project Coordination

- The Team will develop and implement a Portland Harbor Cleanup Public Involvement plan. The public involvement plan will reflect the lead agency for implementing various portions of the plan.
- EPA will maintain its trust responsibility to each tribe. DEQ will assist EPA in carrying out its responsibilities by continuing to coordinate and provide information to interested tribes on the project where the DEQ has the lead, and on the project as a whole. DEQ will continue to provide opportunities for the tribes to participate in state-led efforts.
- EPA will take a lead role in negotiations to implement in-water work.
- EPA will have the lead role for enforcement of in-water investigation and cleanup.
- The Team will work directly with the trustees on natural resource damage issues.

Upland Sites

- DEQ will take the lead in negotiations with the PRPs on upland facility work. DEQ may request EPA assistance on specific upland sites.
- DEQ will continue to be the lead enforcement agency for upland work, including source control. The specific strategy will be included in the memorandum of agreement between the agencies.
- DEQ will continue its communications with and provide information to the trustees and provide them the opportunity to participate in state-led efforts.

Funding

- It is anticipated that most if not all of the investigation, cleanup, and tribal and trustee participation will be funded by the PRPs.
- One or both of the agencies will issue unilateral orders to ensure timely performance of work by recalcitrant responsible parties.
- DEQ intends to recover its costs for all Project work to date, including development of the management plan and the RI/FS work plan.
- Both agencies intend to recover all future direct and indirect project costs, and to coordinate their cost recovery efforts.